

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PENDLETON DIVISION

**THEODORE O. TORESON,**

Petitioner,

v.

**T. BOWSER,**

Respondent.

No. 2:18-cv-00068-SU

OPINION AND ORDER

**MOSMAN, J.,**

On October 25, 2018, Magistrate Judge Patricia Sullivan issued her Findings and Recommendation (F&R) [19], recommending that Respondent's Motion to Dismiss [16] should be GRANTED and Petitioner's Second Amended Petition for Writ of Habeas Corpus [9] should be DENIED. Judge Sullivan further recommended that the Court should enter a judgment dismissing this case with prejudice and that the Court should decline to issue a Certificate of Appealability. No objections were filed.

**DISCUSSION**

The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to

make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Sullivan's recommendation and I ADOPT the F&R [19] as my own opinion. Respondent's Motion to Dismiss [16] is GRANTED and Petitioner's Second Amended Petition for Writ of Habeas Corpus [9] is DENIED. I agree with Judge Sullivan that Petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2), and thus I DECLINE to issue a Certificate of Appealability.

IT IS SO ORDERED.

DATED this 8th day of January, 2019.

*Michael W. Mosman*  
MICHAEL W. MOSMAN  
Chief United States District Judge